



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71376; File No. SR-OCC-2013-807)

January 23, 2014

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No
Objection to Advance Notice Filing Concerning the Governance Committee Charter

On November 26, 2013, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) advance notice SR-OCC-2013-807 (“Advance Notice”) pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 (“Clearing Supervision Act” or “Title VIII”)¹ and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934 (“Exchange Act”).² The Advance Notice was published for comment in the Federal Register on December 20, 2013.³ The Commission did not receive any comments on the Advance Notice publication. This publication serves as a notice of no objection to the Advance Notice.

I. Description of the Advance Notice

This advance notice concerns the Board of Director’s (“Board”) formation of a Governance Committee (“GC”) and its approval of the GC Charter. As set forth in the GC Charter, the purpose of the GC is to review the overall corporate governance of OCC

¹ 12 U.S.C. 5465(e)(1).

² 17 CFR 240.19b-4(n)(1)(i). OCC is a designated financial market utility and is required to file advance notices with the Commission. See 12 U.S.C. 5465(e). OCC also filed the proposal in this Advance Notice as a proposed rule change under Section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder, which was published for comment in the Federal Register on December 16, 2013. 15 U.S.C. 78s(b)(1); 17 CFR 240.19b-4. See Release No. 34-71030 (Dec. 11, 2013), 78 FR 76182 (Dec. 16, 2013) (SR-OCC-2013-18).

³ Release No. 34-71803 (Dec. 16, 2013), 78 FR 77181 (Dec. 20, 2013) (SR-OCC-2013-807) (“Notice”).

and recommend improvements to OCC's Board. The GC Charter describes the role the GC plays in assisting the Board in fulfilling its responsibilities, as described in OCC's By-Laws and Rules, as well as specifying the policies and procedures governing the membership and organization, scope of authority, and specific functions and responsibilities of the GC. In addition, the guidelines for the composition of the GC as well as the policies regarding its meeting schedule, quorum rules, minute-keeping and reporting requirements are set forth in the GC Charter and conform to applicable requirements specified in OCC's By-Laws and Rules.

The GC is composed of not fewer than five Directors with at least one Public Director, one Exchange Director and one Member Director. Management Directors will not be members of the GC. The Board will designate a GC Chair and if the Chair is not present at a meeting, the members who are present will designate a member to serve as the Acting Chair. The GC will meet at least four times a year and a majority of the GC members constitutes a quorum. The GC is permitted to call executive sessions from which guests of the GC may be excluded, and GC members are permitted to participate in all meetings by conference telephone call or other means of communication that permit all meeting participants to hear each other. The GC Chair, or the Chair's designee, will report regularly to the Board on the GC's activities.

The GC Charter sets forth certain functions and responsibilities for the GC including, but not limited to, the following: review the composition of the Board as a whole, including the Board's balance of participant and non-participant directors, business specialization, technical skills, diversity and other desired qualifications; review the Board's Charter for consistency with regulatory requirements, transparency of the

governance process and other sound governance practice and recommend changes to the Board, where appropriate; review the committee structure of the Board, including the GC, and recommend changes to the Board, where appropriate; review OCC's policies and procedures for identifying and reviewing Board nominee candidates, including the criteria for Board nominees; develop and recommend to the Board a periodic process of self-evaluation of the role and performance of the Board, its committees and management in the governance of OCC; review OCC's policies on conflicts of interest of directors, including the OCC Directors Code of Conduct and recommend changes, where appropriate; and, review OCC's new director orientation program as well as OCC's training and education programs for Board members and recommend changes, where appropriate. In addition to the foregoing, the GC may undertake other and different activities, as appropriate, or as may be delegated to it by the Board. In discharging its role, the GC shall confer with management and other employees of OCC to the extent the GC deems it necessary to do so to fulfill its duties.⁴

II. Discussion and Commission Findings

Although Title VIII does not specify a standard of review for an advance notice, the Commission believes that the stated purpose of Title VIII is instructive.⁵ The stated purpose of Title VIII is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards

⁴ The GC, subject to the approval of the Board, is permitted to hire specialists or rely on outside advisors or specialists to assist it in carrying out the GC's activities. The GC has the authority to approve the fees and retention terms of such advisors and specialists.

⁵ See 12 U.S.C. 5461(b).

for systemically-important financial market utilities (“FMUs”) and strengthening the liquidity of systemically important FMUs.⁶

Section 805(a)(2) of the Clearing Supervision Act⁷ authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities and financial institutions engaged in designated activities for which it is the supervisory agency or the appropriate financial regulator. Section 805(b) of the Clearing Supervision Act⁸ states that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act⁹ (“Clearing Agency Standards”).¹⁰ The Clearing Agency Standards became effective on January 2, 2013 and require registered clearing agencies that perform central counterparty (“CCP”) services to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing

⁶ Id.

⁷ 12 U.S.C. 5464(a)(2).

⁸ 12 U.S.C. 5464(b).

⁹ 12 U.S.C. 5464(a)(2).

¹⁰ Rule 17Ad-22, 17 CFR 240.17Ad-22. Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7-08-11).

basis.¹¹ As such, it is appropriate for the Commission to review advance notices against these Clearing Agency Standards and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act.¹²

OCC's GC, as described above, is tasked with reviewing the overall corporate governance of OCC and making recommendations to the Board for improvements. Consistent with Section 805(b) of the Clearing Supervision Act,¹³ the Commission believes that OCC's GC should help promote robust risk management and mitigate systemic risk by enhancing the transparency of OCC's governance arrangements and providing a vehicle for the review of OCC's governance structure, policies and overall effectiveness and efficiency.

Commission Rule 17Ad-22(d)(8),¹⁴ adopted as part of the Clearing Agency Standards,¹⁵ requires that a registered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to "have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act applicable to clearing agencies, to support the objectives of

¹¹ The Clearing Agency Standards are substantially similar to the risk management standards established by the Board of Governors of the Federal Reserve System ("Federal Reserve") governing the operations of designated DFMUs that are not clearing entities and financial institutions engaged in designated activities for which the Commission or the Commodity Futures Trading Commission is the Supervisory Agency. See Financial Market Utilities, 77 FR 45907 (August 2, 2012).

¹² 12 U.S.C. 5464(b).

¹³ See 12 U.S.C. 5464(b).

¹⁴ 17 CFR 240.17Ad-22(d)(8).

¹⁵ See supra note 10. Release No. 34-68080 (Oct. 22, 2012), 77 FR 66219 (November 2, 2012).

owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures.” The Commission believes that the GC's review of OCC's governance structure and any related recommendations that clarify OCC's governance structure or further define governance responsibilities may help OCC fulfill these requirements. Moreover, the Commission believes that the GC may also aid in identifying any risks and inefficiencies in the current governance structure and making recommendations to the full Board to help mitigate those risks and eliminate any such inefficiencies.

III. Conclusion

IT IS THEREFORE NOTICED, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,¹⁶ that the Commission DOES NOT OBJECT to advance notice proposal (SR-OCC-2013-807) and that OCC is AUTHORIZED to implement the proposal as of the date of this notice or the date of an order by the Commission approving a proposed rule change that reflects rule changes that are consistent with this advance notice proposal (SR-OCC-2013-18), whichever is later.

By the Commission.

Elizabeth M. Murphy
Secretary

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¹⁶ 12 U.S.C. 5465(e)(1)(I).